7-22-1976

Juanita Castle v. Ralph Castle

Reply Brief (P) 1975-SC-0940

KYSC1975-SC-0940-02
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{134944}{54-130314:141115}{072276}

REPLY BRIEF (P)

SUPREME COURT OF KENTUCKY

File No. 75-940

JUANITA CASTLE, - - - - - - Appellant

versus

RALPH CASTLE, - - - - - - Appellee

APPEAL FROM JOHNSON CIRCUIT COURT
HON. W. D. SPARKS

APPELLANT'S RESPONSE TO PETITION FOR REHEARING

FILED

JUL 22 1976

Supreme Court

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This is to certify that a true copy of this Response to Petition for Rehearing has been served on Hon. J. K. Wells, Wells, Porter & Schmitt, Attorneys for Appellee, Paintsville, Kentucky; and to Hon. W. D. Sparks, Louisa, Kentucky, Trial Judge, pursuant to RAP 1.250, this the 21 day of July, 1976.

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SUPREME COURT OF KENTUCKY

File No. 75-940

JUANITA CASTLE, - - - - - *Appellant*

v.

RALPH CASTLE, - - - - - - *Appellee*

APPELLANT'S RESPONSE TO PETITION FOR REHEARING

May it please the Court:

ARGUMENT

The Appellee in the above styled appeal has filed a Petition for Rehearing, asking the Court to reconsider its opinion rendered herein June 11, 1976.

The basis for the Petition for Rehearing is that the promissory notes were given in exchange for the sale of a coal mine which was acquired by Appellee and his brothers initially in 1947, two years before the marriage of the parties hereto on August 20, 1949.

However, the Petition for Rehearing fails to point out, as was in fact pointed out in the brief for the Appellant, on page seven, that the purchase of the coal mine by Appellee and his brothers, from their father, was paid for by royalties as the coal was mined over a period of twenty years up until the sale of the coal mines in exchange for the promissory note, in 1967.

The Appellee's brother, Bruce Castle, testified with regard to the purchase of the coal mine from his father as follows:

> "Q. 6. You all got into the coal mining business by buying it from your father?
>
> A. Yes, he bought the mineral and started to mine in 1947. July 1, 1947, and he operated it himself up until the late fall, till we got it going and he turned it over to us to take over from there, and at that time I believe he had X amount of dollars involved, and gave it to us with the understanding that we were to pay him Twenty-five Cents a ton for each and every ton that come from the mineral that he gave us, until it was mined out. That was finished up June 30, 1967.
>
> Q. 7. So you all did pay a royalty then to your father?
>
> A. Yes, sir." (T.R., Vol. I, pp. 00072-00073).

Wherefore, it is quite clear that the overwhelming part of the royalties used to pay appellee's father for the coal mine were earned during coverture. At the time of the sale of the coal mines in 1967 in exchange for the promissory notes, the parties hereto had been married for 18 of the twenty years that Appellee and his brothers had operated the mines and paid for it by way of royalties on coal mined.

Therefore, there is clearly no merit to the contention that Appellee's interest in the coal mines constitutes property acquired prior to marriage.

By way of analogy, if a man were to buy a home, and finance it through a lending institution over a period of twenty years, made payments on it for two years

and then married, and continued to make payments on the home for the balance of the eighteen years, it is clear that the home would be considered a part of the marital property of the parties, and a result of the joint efforts of the parties throughout their marriage.

In order to prevent the promissory notes from being treated as marital property, it would have been incumbent upon the Appellee to show that the coal mines were paid for prior to the marriage, and in addition, it would have been incumbent upon the Appellee to show that the increase of the value of the coal mines during the marriage did not result from the efforts of the parties during their marriage. Neither was proved by the Appellee, and it is submitted that the reasons for such failure of proof is that it simply could not have been proved.

CONCLUSION

Therefore, it is submitted that the Opinion of the Court rendered June 11, 1976 is in conformity with the law and evidence, and should not be disturbed.

Respectfully submitted,

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